IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 78 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

N.C.JAIN

Versus

DEEPAKBHAI RAMNIKLAL KOTHARI

Appearance:

MR JS YADAV for Petitioner

MR DM THAKKAR for Respondent No. 1

MR LR POOJARI, APP. for Respondent No. 2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 07/04/2000

ORAL JUDGEMENT

#. The respondent no.1 was Managing Director of Jintan Clinical India Pvt.Ltd.,Surendranagar, which owned a factory at Surendranagar and which was covered under the provisions of the Employees Provident Funds & Miscellaneous Provisions Act. The factory had been closed since 1981. On 1.1.1992 the respondent no.1 filed

criminal complaint against the petitioner who was Assistant Provident Fund Commissioner, Rajkot at that time. The complaint was filed in the Court of Chief Judicial Magistrate, Surendranagar, alleging that 203 applications of the employees for refund of their provident fund amount had been given to the petitioner in person on 4.10.1991 and thereafter, further list was submitted on 21.10.1991 and 14.11.1991. It was alleged that though the petitioner was duty bound to make payment immediately under the scheme he behaved rudely and refused to make the payment and said that he did not want to talk with the respondent no.1.The respondent no.1 therefore served notice through his Advocate but the petitioner gave evasive reply. It was alleged that the petitioner had committed offence punishable under section 409 of the IPC and Rule 76D of the Employees' Provident Fund Scheme.

#. The learned Chief Judicial Magistrate after recording the statement of the respondent ordered the complaint to be registered and issued process against the petitioner for the offence punishable under section 409 of the IPC and Rule 76(d) of the Provident Funds Scheme.

#. The petitioner thereupon filed present Special Criminal Application in this Court invoking jurisdiction under Article 227 of the Constitution and under section 482 of the Code of Criminal Procedure for quashing the said order of the Chief Judicial Magistrate and against the complaint filed by the respondent no.1.

#. Mr.J.S.Yadav, learned Counsel for the petitioner submitted that complaint had been received from some employees against the employer and the petitioner was duty bound to investigate them which will naturally take some time and the petitioner cannot be said to have committed any offence of criminal breach of trust. He also drew my attention to clause 76 of the Employees' Provident Funds Scheme,1952 which reads as follows :

"76.PUNISHMENT FOR FAILURE TO PAY CONTRIBUTIONS,ETC. -If any person -

3(a) deducts or attempts to deduct from the wages or other remuneration of a member the whole or any part of the employer's contribution, or

3(b) fails or refuses to submit any return, statement or other document required by this scheme or submits a false return, statement or other document, or makes a false declaration, or

3(c)Obstructs any inspector or other official appointed under the Act or this scheme in the discharge of his duties or fails to produce any record for inspection by such inspector or other official, or

(d)is guilty of contravention of or non-compliance with any other requirement of this scheme.

he shall be punishable with imprisonment which may extend to [one year, or with fine which may extend to four thousand rupees], or with both."

It is obvious that the said provision seeks to punish various breaches committed by the employer and, prima facie, it does not apply to any omission by the Commissioner under the Scheme. Under the circumstances, there is no question of the petitioner having committed any offence punishable under section 409 of the IPC or under Rule 76(d). Moreover, in the complaint itself it was stated that the complainant had written to the Central Government for sanction to prosecute the petitioner but no reply had been received but at the same time the sanction had not been refused either. However, the fact remains that no sanction was obtained. If there was an allegation that the petitioner had been guilty of any omission in performance of his duties which amounted to an offence then obviously sanction would be necessary. The learned Chief Judicial Magistrate without applying his mind to this question proceeded to issue process. It appears that the complaint was filed to bring pressure on the petitioner in performance of his duties. The complaint does not disclose any offence committed by the petitioner and if there was any omission in the performance of duties which amounted to an offence then sanction was necessary. The order of the learned Chief Judicial Magistrate issuing the process therefore cannot be sustained and is required to be set aside. Hence, the petition is allowed and the impugned order dated 1.1.1992 passed by the learned Chief Judicial Magistrate, Surendranagar issuing the process against the petitioner in Criminal Csse No. 8 of 1992 is quashed and set aside and the said complaint is ordered to be dismissed. Rule made absolute.

m.m.bhatt